

## **3 FAM 2160**

# **POLICY ON BALANCED WORKFORCE GUIDELINES AND PROCEDURES**

*(CT:PER-669; 02-28-2012)*  
*(Office of Origin: A/CSM)*

## **3 FAM 2161 PURPOSE**

*(CT:PER-669; 02-28-2012)*

The purpose of this policy is to:

- (1) Provide guidance to ensure the successful implementation of:
  - (a) Section 736 of the Omnibus Appropriations Act, 2009 (Public Law 111-8; Division D); and
  - (b) Office of Management and Budget (OMB) guidance on Managing the Multi-Sector Workforce, M-09-26;
- (2) Ensure the consistent implementation of the Department's Balanced Workforce guidelines and procedures to guarantee that Federal employees receive consideration, on a regular basis, to perform new functions and functions performed by contractors;
- (3) Implement the Department's Balanced Workforce guidelines and procedures in accordance with the Department's Quadrennial Diplomacy and Development Review (QDDR); and
- (4) Provide special consideration to Federal employees to perform certain functions.

## **3 FAM 2162 BACKGROUND**

*(CT:PER-669; 02-28-2012)*

- a. In early 2009, Congress passed, and the President signed into law, the Omnibus Appropriations Act, 2009. Section 736 of Division D (Financial Services and General Government Appropriations Act), requires agencies subject to the Federal Activities Inventory Reform (FAIR) Act of 1998

(Public Law 105-270; 31 U.S.C. 501 note) to ensure Federal employees are considered, on a regular basis, when deciding who should perform new functions or functions currently performed by contractors.

- b. The Office of Management and Budget (OMB) issued guidance regarding the implementation of this legislation and to ensure agencies comprehensively review their management of the multi-sector workforce in Memorandum M-09-26. This guidance should improve the Department of State's ability to reduce costs and staff and manage its workforce appropriately. However, as the Department of State decides to use Federal employees to perform new and expanded requirements and to in-source contracted work, the size of the Department of State's in-house workforce may increase. The Department of State must demonstrate to Congress and the Administration how in-sourcing is being used to:
  - (1) Ensure inherently governmental and exempt functions are reserved for government performance;
  - (2) Improve contract management and oversight; and
  - (3) Eliminate an overreliance on contractors in areas where such overreliance exists.

### **3 FAM 2163 APPLICABILITY**

*(CT:PER-669; 02-28-2012)*

This policy is applicable to all departmental bureaus, offices, and other elements utilizing contractor support and services.

### **3 FAM 2164 RESPONSIBILITIES**

*(CT:PER-669; 02-28-2012)*

The Director, Commercial Services Management (A/CSM), in coordination with program, human capital, procurement, and resource management, has the primary responsibility for implementing and overseeing guidance associated with in-sourcing and multi-sector workforce management. Each bureau within the Department must name a senior accountable official with responsibility for ensuring comprehensive implementation of this guidance and provide the name and contact information to the Director, Commercial Services Management. The Director, Commercial Services Management, will provide supplemental guidance to assist Department of State entities in the implementation of these requirements. Each bureau is responsible for

appropriately managing their contractor and Federal employee resources and ensuring that inherently governmental functions are being performed by government employees.

## **3 FAM 2165 GUIDELINES AND PROCEDURES FOR IMPLEMENTATION OF SECTION 736 OF DIVISION D OF THE OMNIBUS APPROPRIATIONS ACT, 2009, AND OMB GUIDANCE REGARDING MULTI-SECTOR WORKFORCE MANAGEMENT**

### **3 FAM 2165.1 Establishment of Balanced Workforce Steering Group**

*(CT:PER-669; 02-28-2012)*

A Balanced Workforce Steering Group (BWSG) is established in the Department of State to lead and oversee implementation of Section 736 of Division D of the Omnibus Appropriations Act, 2009, and OMB guidance regarding Multi-Sector Workforce Management. The steering group will be chaired by the Under Secretary for Management and include representatives from the offices of the Chief Acquisitions Officer (CAO), Chief Human Capital Officer (CHCO), and the Chief Financial Officer (CFO).

### **3 FAM 2165.2 Subchapter Definitions**

*(CT:PER-669; 02-28-2012)*

**'Functions closely associated with inherently governmental functions (CAIG)'**: See the functions described in FAR 7.503 (d) of the Federal Acquisition Regulation (FAR). (This definition may be revised by OMB.)

**'Inherently governmental (IG) functions'**: The meaning given in FAR 7.5 of the Federal Acquisition Regulation. (This definition may be revised by OMB.)

### **3 FAM 2165.3 General Consideration of Federal Employee Performance for New Functions and Contracted Functions That Could Be Performed by**

## Federal Employees

*(CT:PER-669; 02-28-2012)*

- a. Bureaus using contract services must give consideration, on a regular basis, to using Federal employees to perform new functions and functions that are performed by contractors and could be performed by Federal employees.
- b. Pursuant to OMB guidance, the Department will augment existing, ongoing agency management or efficiency reviews with a consideration of where opportunities exist to improve performance with the use of Federal employees. The following guidelines apply when considering whether to use Federal employees to perform new or expanded requirements and functions performed by contractors that could be performed by Federal employees:
  - (1) If functions/activities are no longer required, they must be eliminated;
  - (2) If new or expanded requirements or functions performed under contract are determined to be inherently governmental or exempt from private-sector performance, the functions must be converted to government performance. In such cases, no cost analysis is necessary;
  - (3) For all other new or expanded requirements where both sectors are being considered for performance of a requirement, and for all other functions performed under contract where performance could improve through use of Federal employees, the bureau must perform a cost analysis that addresses the full costs of performance and provides "like comparisons" of relevant costs to determine the most cost-effective source of support;
  - (4) While there may be cases where performance and risk considerations clearly outweigh cost considerations when considering workforce mix, they should be rare. Factors for determining where full cost analyses may not be required include:
    - (a) The need to establish or build internal capacity to maintain control of mission and operations;
    - (b) The function is closely associated with an inherently governmental function and in-house performance is necessary for the agency to maintain control of its mission and operations; or

- (c) The continued use of the private sector would compromise critical agency or Administration guidance.
- c. If a decision is made to use Federal employees, but the bureau's Human Resources Service Provider (HRSP) Director determines that qualified Federal employees cannot be hired to perform the function, officials may contract (or continue to contract) for the services provided the function is not inherently governmental or otherwise exempt from private-sector performance.

### **3 FAM 2165.4 Special Consideration for Certain Functions**

*(CT:PER-669; 02-28-2012)*

- a. All bureaus of the Department shall give special consideration to Federal employees when deciding what sector should perform Department functions. Where a contractor is performing a function, you should consider the following factors:
  - (1) Was the function performed by Federal employees at any time during the previous 10 years?
  - (2) Is the function closely associated with the performance of an inherently governmental function?
  - (3) Was the contract awarded on a noncompetitive basis?
  - (4) Is the function being performed poorly, as determined by a contracting officer during the 5-year period preceding the date of such determination, because of excessive costs or inferior quality?  
and
  - (5) Is the reliance on contractors such that the bureau has diminished or lost control of its mission?
- b. Special consideration must be given to new requirements, with particular emphasis on a new requirement that is similar to a function previously performed by a Federal employee or is a function closely associated to the performance of an inherently governmental function.

### **3 FAM 2165.5 Special Consideration for High-Risk Contracts**

*(CT:PER-669; 02-28-2012)*

- a. The Department must give special consideration to in-sourcing 'high-risk' contracts. High-risk contracts include four category types as specified in OMB M-09-25:
  - (1) Contracts awarded on a noncompetitive basis;
  - (2) Contracts for which only one contractor submitted a bid;
  - (3) Cost-reimbursement contracts; and
  - (4) Time and materials, labor-hour (T&M/LH) contracts.
- b. When continuing to contract for services currently in a high-risk category, the acquisition strategy should be examined to determine if future procurements can be conducted under a contract not specified as 'high-risk'.

### **3 FAM 2165.6 Service Contract Inventory**

*(CT:PER-669; 02-28-2012)*

- a. The Consolidated Appropriations Act, 2010 (Public Law 111-17; Division C, Section 743) requires an inventory of service contracts to ensure comprehensive implementation of sound multi-sector workforce management and other statutory requirements. The Department will develop a service contract inventory that will be used in conjunction with Federal employee staffing patterns and the FAIR Act Inventory to map how in-house and contracted labor is being used to support mission requirements. The service contract inventory will identify, for each service contract:
  - (1) A description of the services purchased and the role the services played in achieving agency objectives;
  - (2) The organizational component administering the contract and the organizational component whose requirements are being met through contractor performance of the service;
  - (3) The total dollar amount obligated for services under the contract and the funding source for the contract;
  - (4) The total dollar amount invoiced for services under the contract;
  - (5) The contract type and date of award;
  - (6) The name of the contractor and place of performance;

- (7) The number and work location of contractor and subcontractor employees, expressed as full-time equivalents for direct labor;
  - (8) Whether the contract is a personal services contract;
  - (9) Whether the contract was awarded on a noncompetitive basis; and
  - (10) How the work is classified and whether it is:
    - Inherently governmental
    - Closely associated to inherently governmental
    - Critical
    - Essential or
    - Nonessential
- b. Pursuant to statutory requirements, the Department will conduct a review of contracts and activities to determine the extent to which:
- (1) Personal services contracts were entered into or are being performed in a manner that is inconsistent with applicable statutory and regulatory requirements;
  - (2) Contractors are performing inherently governmental functions;
  - (3) Contractors are performing functions closely associated with inherently governmental functions; and
  - (4) Contracts are not staffed with the proper amount of oversight.
- c. If there are functions or activities under contract that are determined to be inherently governmental or exempt from private-sector performance, they must be converted to government performance consistent with Department of State guidelines or eliminated if no longer required.
- d. The Department of State will review the service contract inventory to identify activities that should be considered for conversion either:
- (1) To performance by Federal employees as required by Section 736; or
  - (2) To an acquisition approach that would be more advantageous to the Department of State.
- e. In addition, the Department of State will develop a plan to provide for

appropriate consideration to be given to the conversion of these activities within a reasonable period of time.

### **3 FAM 2165.7 No Limitations or Restrictions**

*(CT:PER-669; 02-28-2012)*

Limitations or restrictions must not be placed by the Department or any departmental entity on the number of functions or activities converted from contractor to Federal employee performance.

### **3 FAM 2165.8 Procedures Governing Section 736 Actions**

*(CT:PER-669; 02-28-2012)*

- a. Requests for human resources must be closely managed to ensure responsible stewardship of Department of State resources.
- b. When the Department of State has a new or expanded requirement or is considering whether to convert from contractor to government performance, managers must follow standard procedures for validating the requirement as determined by the Office of Human Resources Office of Resource Management Analysis (HR/RMA). This must include verifying the mission, functions, tasks to be performed, required level of performance, and resources necessary for mission success. Officials must ensure performance requirements (e.g., required capability or outcome) are stated accurately and relate directly to the mission priority, available resources, and acceptable risk. In certain cases, workforce-mix decisions may depend on the availability of Federal employee personnel as determined by a human resources market analysis. The Human Resources Service Provider for the bureau will address any changes required to the organizational structure and position descriptions. These will be provided to HR/RMA for approval and must comply with 1 FAM 010 (Authority, Responsibility and Organization) requirements.
- c. Department of State Assistant Secretaries are accountable for the management and deployment of their resources. Department of State officials must prioritize workforce requirements (to include human resources and contract support) according to the importance of the mission and acceptable level of risk, so that requests for resources can be considered relative to other competing needs. Requests for additional human resources must be fully justified, prioritized, and include a funding source or offset based on a reprioritization of other human



resources/contract support or program requirements.

### **3 FAM 2165.9 Guidelines for Documentation of Section 736 Actions**

*(CT:PER-669; 02-28-2012)*

- a. The Department of State must make every effort to determine the appropriate workforce mix in sufficient time to document the full-time equivalents for the Federal employees in their program/budget submissions. However, the Department of State may authorize additional temporary positions to preclude a gap in service, provided the human resource requirements have been documented/validated and sufficient funds are available to pay for the Federal employee positions.
- b. Bureaus that have taken action under Section 736 must provide all pertinent documentation demonstrating the analysis performed to the Director, Commercial Services Management (A/CSM). The Director, Commercial Services Management, will retain supporting documentation for Section 736 decisions (to include copies of bureau cost analyses, decisions made by human resource service providers, and determinations made by contracting officers) so that the Department is able to justify its Section 736 decisions in the event of a Government Accountability Office (GAO) audit or other similar review.

### **3 FAM 2166 THROUGH 2169 UNASSIGNED**